

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

February 14, 2022

In Reply Refer to:

EPA Complaint No. 03NO-21-R6

James C. Kenney
Secretary
New Mexico Environment Department
Office of Public Facilitation
1190 St. Francis Drive
Suite N4050
Santa Fe, NM 87505
james.kenney@state.nm.gov

Re: Informal Resolution/Tolling of Preliminary Findings Timeframe

Dear Secretary Kenney:

This letter concerns EPA Complaint No. 03NO-21-R6 against the New Mexico Environment Department (NMED), which was accepted for investigation on November 2, 2021. ECRCO is required by regulation to seek cooperation with recipients in securing compliance with 40 C.F.R. Parts 5 and 7 through informal and voluntary means whenever possible.¹ ECRCO representatives described the process for developing and executing an Informal Resolution Agreement (IRA) to the Cabinet Secretary and General Counsel of NMED during a conversation on November 19, 2021. On November 24, 2021, the General Counsel of NMED, by electronic mail, informed ECRCO of NMED's decision to engage in negotiations toward the execution of an IRA. Accordingly, as of November 24, 2021, ECRCO and NMED commenced IRA discussions. ECRCO, therefore, suspended the 180-day timeframe for issuing Preliminary Findings (40 C.F.R. § 7.115(c)(1)) as of that date and for the duration of the IRA process. ECRCO will ensure that this process occurs without undue delay.

The goal of the IRA negotiation process is to reach an agreement between the NMED and ECRCO that resolves the issues accepted for investigation. If the NMED and ECRCO fail to reach an informal resolution agreement, ECRCO will notify NMED and the Complainant of that fact and resume the process for issuing preliminary findings.² To facilitate the informal

¹ See 40 C.F.R. § 7.105 (EPA "shall seek the cooperation of applicants and recipients in securing compliance with" 40 C.F.R. Part 7); and 7.120(d)(2) (EPA "shall attempt to resolve complaints informally whenever possible.").

² See 40 C.F.R. § 7.115(c). In the event ECRCO and NMED cannot reach an Informal Resolution Agreement,

resolution agreement process, we will continue to engage with you, as well as the Complainant, to gather the necessary facts and information so that we may provide you with a draft IRA as soon as possible for your consideration.

If you have questions about this letter, please feel free to contact me by email at dorka.lilian@epa.gov or at (202) 564-9649, or Waleska Nieves-Muñoz, Case Manager at (202) 564-7103 or by email at waleska.nieves-munoz@epa.gov.

Sincerely,



Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Ariadne Goerke
Deputy Associate General Counsel
Civil Rights & Finance Law Office

Cecil Rodrigues
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
U.S. EPA Region 6

James McGuire
Regional Counsel
U.S. EPA Region 6

ECRCO will resume the process for issuing preliminary findings within 180 days of the start of the investigation – excluding the period spent in the informal resolution agreement process.